No. 09-882

IN THE
Supreme Court of the United States

JOHN DAVID RUELAS,

Petitioner,

v.

HUGH WOLFENBARGER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

The State of Michigan offers no real defense for the judgment of the Sixth Circuit, nor does the State provide any sound reason for this Court to deny certiorari. To the contrary, the State's opposition—both in its statements and omissions—provides strong support for granting this petition.

First, and most strikingly, the State does not dispute that the Sixth Circuit's holding—that an involuntary guilty plea is subject to harmless-error review—creates a conflict with the Second, Third, Tenth, and Eleventh Circuits. It is thus undisputed that there is a circuit split on the question presented.

Second, the State offers no real disagreement with Ruelas's argument that the Sixth Circuit's application of harmless-error review to an involuntary guilty plea is unreasonable under the Court's precedents because an involuntary guilty plea "bears directly on the 'framework within which the trial proceeds'. . . or indeed on whether it proceeds at all" and is therefore properly characterized as a "structural error." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). Rather than addressing whether an involuntary guilty plea can be harmless, the State acts as if the issue concerns a breached plea agreement. It does not.

Third, the State evidently agrees with Ruelas that even if an involuntary plea could be evaluated under harmless-error standards, the Sixth Circuit's holding in this case takes a legally erroneous

approach to evaluating the harm of an involuntary guilty plea. The Sixth Circuit held that in the habeas context whether an involuntary plea is harmless is evaluated by determining whether, but for that involuntary plea, the defendant would have been convicted. In contrast, the State agrees with Ruelas's alternative argument that if harmless-error review applies, the relevant question is whether the involuntary plea deprived the defendant of a trial he would have otherwise demanded. *See* Opp. 17. Accordingly, the State would also have to agree that the standard adopted by the Sixth Circuit illogically makes it more difficult for a habeas petitioner to prove direct harm from an involuntary plea than it would if the same petitioner had to prove collateral harm from ineffective assistance leading to an involuntary guilty plea. The State makes no attempt to defend the Sixth Circuit's standard or its illogical results.

Rather than rebutting these points—all of which arise from the Sixth Circuit's decision—the State instead opposes certiorari by creating a straw man—framing the Sixth Circuit's decision as if it were based on a breached plea agreement (which the State evidently would have preferred), and then defending that make-believe decision. The fact is that the Sixth Circuit did not issue a decision on the terms the State defends. Actually, the Sixth Circuit assumed the plea was involuntary and issued a far-reaching legal holding now binding in four states that an involuntary guilty plea can be harmless.

ARGUMENT

I. The State Ignores the Conflict Among the Circuits and the Conflict Between the Sixth Circuit's Decision and This Court's Precedents.

As the Petition showed, the Sixth Circuit's holding that harmless-error standards apply on habeas review of an involuntary guilty plea directly conflicts with the decisions of four other circuits, which do not apply harmless-error standards on habeas review to involuntary guilty pleas. *See Hicks v. Franklin*, 546 F.3d 1279, 1287 (10th Cir. 2008); *Jamison v. Klem*, 544 F.3d 266, 279 (3d Cir. 2008); *Hanson v. Phillips*, 442 F.3d 789, 802 (2d Cir. 2006); and *Pardue v. Burton*, 26 F.3d 1093, 1097 (11th Cir. 1994). The State simply decided to ignore these cases, effectively conceding the split's existence.

Rather than addressing the circuit conflict, the State argues that "[t]his Court has not previously addressed whether an involuntary plea could be subject to harmless error analysis" and that "even if assumed to be an involuntary plea, the decision of the State courts would not be an objectively unreasonable application of clearly established Supreme Court precedent." Opp. 11. But that is a future merits brief argument because it is no answer to the entrenched conflict among the circuits over whether an involuntary guilty plea is subject to harmless-error review. The State leaves that question unanswered.

Moreover, while arguing that this Court has not addressed whether an involuntary guilty plea can be

harmless, the State ignores *every one* of this Court's decisions concerning involuntary guilty pleas. Those decisions make clear that an involuntary guilty plea cannot be harmless. For example, in *Henderson v. Morgan*, this Court held that an involuntary guilty plea should be set aside even assuming overwhelming evidence of guilt and that the defendant probably would have pleaded guilty anyway. 426 U.S. 637, 644-45 & n.12 (1976). That approach—that overwhelming evidence of guilt is insufficient to save a conviction—is the antithesis of harmless-error review. The State's argument blinks reality.

Indeed, in contrast with the State and the Sixth Circuit, other circuits fully appreciate this point. The Tenth Circuit, applying *Henderson*, granted habeas relief upon concluding that the plea was involuntary. *See Hicks*, 546 F.3d at 1287. Similarly, the Fifth Circuit expressly rejected the argument the State makes now. *See United States v. Amaya*, 111 F.3d 386, 389 (5th Cir. 1997). In *Amaya*, the Government did not dispute that a misrepresentation had been made at the defendant's arraignment, which made the plea involuntary. The Government nonetheless argued that the Fifth Circuit should ignore that misrepresentation because the defendant's "guilt would have led [him] to plead guilty regardless of the district court's statements." *Id.* Citing *Henderson*, the Fifth Circuit roundly rejected that argument, stating that "[t]he Government's argument has been rejected by the Supreme Court and we likewise reject it as irrelevant to the issue at hand." *Id.*

II. The State Erroneously Conflates an Involuntary Guilty Plea with a Breached Plea Agreement and Manufactures Non-Existent Factual Issues.

The State argues as if this case concerns a breached plea agreement. *See* Opp. 11 ("The State of Michigan contends that Ruelas received the benefit of his bargain."), and 12 ("[T]he record does not show that the bargain was broken."). This case, however, is simply not about a breached voluntary plea agreement, but about an involuntary plea.

An involuntary guilty plea is not the same as a breached plea agreement—a point this Court recently reinforced in *Puckett v. United States*, 129 S. Ct. 1423 (2009). A plea agreement is breached when the government fails to fulfill the promises that induced the defendant's voluntary and knowing guilty plea. *See id.* at 1430 ("[I]t is entirely clear that a breach [of a plea agreement] does not cause the guilty plea, when entered, to have been unknowing or involuntary. It is precisely *because* the plea was knowing and voluntary (and hence valid) that the Government is obligated to uphold its side of the bargain." (emphasis in original)). In contrast, a guilty plea is involuntary when it is not a knowing and deliberate act "done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970). That is what occurred here. Ruelas's plea was involuntary because "neither he, nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged," *Bousley v. United States*, 523 U.S. 614, 618 (1998), namely, that

state law prohibited considering manslaughter in a plea to open murder.

Indeed, both courts below recognized this case is about an involuntary plea. Thus, the State's argument that "[t]he plea was voluntary because Petitioner received the benefit of his bargain," Opp. 15, finds the State arguing facts contrary to the decisions below and thus provides no answer to the rule of law that will govern in the Sixth Circuit absent this Court's intervention. The district court found that Ruelas's plea was involuntary. Pet. App. 36a-37a. The Sixth Circuit noted the very arguments the State presents now, yet expressly declined to address them, concluding that the facts and law presented "conundrums" as to whether the plea was involuntary and that the "simplest way to resolve this case is to assume that Michigan either could not or did not consider manslaughter, and to further assume such error rendered Ruelas's guilty plea involuntary." Pet. App. 13a. Where the Sixth Circuit erred was in subsequently treating an involuntary guilty plea the same as it would a breached plea agreement, and thereby holding that an involuntary guilty plea—*like* a breached plea agreement—can be harmless. The State has no defense whatsoever to that flatly erroneous holding.

The State now suggests, for the first time, that Ruelas failed to make a "contemporaneous objection" to the state court's failure to consider manslaughter. Opp. 11. But this newly-minted argument flows from the State's erroneous premise that this case, like *Puckett*, concerns a breached plea agreement.

Moreover, the State has never disputed that Ruelas timely sought to withdraw his plea.

The State also argues that this case is "dependent on a disputed factual record." Opp. 11. But the facts the State contends are "disputed" were decided against the State when the district court concluded that Ruelas's plea was involuntary. Pet. App. 36a-37a. Although the State's brief to the Sixth Circuit argued the very same points the State raises in its opposition, the Sixth Circuit found those points sufficiently unpersuasive that it did not reverse the factual finding of the district court that Ruelas's plea was involuntary, assuming the district court's ultimate finding to be correct. Pet. App. 13a. Thus, the State's opposition defends the Sixth Circuit's decision on factual grounds purportedly supporting the State's contention that Ruelas's plea was voluntary—a contention that the Sixth Circuit never accepted and that the district court rejected outright.

In any event, the Sixth Circuit for good reason did not adopt the arguments the State makes to this Court. First, the State argues that the trial court implicitly must have addressed manslaughter: if manslaughter was not considered, then there would have been no need to explicitly hold that second-degree murder applied. Opp. 12. Call this point "criminal judgment by process of elimination." Not surprisingly, such a process is contrary to fundamental constitutional principles and Michigan law, which *requires* that a trial court taking a plea to open murder determine whether a factual basis exists to support a finding of either first- or second-degree murder. *Compare* Opp. 13 ("The finding that

second-degree murder was established would have been unnecessary if the only other option was first-degree murder.") *with People v. Watkins*, 661 N.W.2d 553, 556-57 (Mich. 2003) (emphasizing that a trial court has a statutory duty at a degree hearing "to determine whether there was a factual basis to support a finding that [the] defendant was guilty of first-degree murder or only second-degree murder."). *See also North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970) (requiring a factual basis for guilty pleas).

The State next argues that even if Michigan law did not allow manslaughter to be considered in a plea to open murder—contrary to the promise that induced Ruelas's plea—the parties could agree to have the trial court proceed in a manner contrary to state law. In other words, the State contends that the parties can authorize a trial court to act *ultra vires*. But the only case cited by the State, *People v. Riley*, 636 N.W.2d 514 (Mich. 2001), provides no support for this remarkable proposition because it concerns a fundamentally different issue of whether a defendant can waive an objection to the presentation of otherwise inadmissible hearsay testimony. In sharp contrast, well-established authority rejects the State's argument that an agreement of the parties can allow a trial court to consider an offense or sentence not allowed by statute. *See, e.g., United States v. Greatwalker*, 285 F.3d 727, 729-30 (8th Cir. 2002) ("There can be no plea bargain to an illegal sentence. Even when a defendant, prosecutor, and court agree on a sentence, the court cannot give the sentence effect if it is not authorized by law." (citations omitted)).

Finally, there is no merit to the State's argument that certiorari should be denied because the only remedy available to Ruelas would be specific performance of the agreement to consider manslaughter. Specific performance is a remedy available for breached plea agreements, where the underlying plea is valid. *See Puckett*, 129 S. Ct. at 1430. In this case, however, the underlying plea is invalid. As this Court recently explained, "[t]he nature of relief secured by a successful collateral challenge" to a guilty plea is "an opportunity to withdraw the plea and proceed to trial." *Padilla v. Kentucky*, 130 S. Ct. 1473, 2010 WL 1222274, at *10 (2010). Because Ruelas's plea was invalid when entered, he is entitled to withdraw it and proceed to trial.

III. The State Agrees with Ruelas's Alternative Argument That the Sixth Circuit Erroneously Focused on Whether Ruelas Would Have Been Convicted If the Plea Had Been Voluntary, Rather Than on Whether He Would Still Have Pleaded Guilty.

Although the State refused to join issue with Ruelas for the threshold question of whether an involuntary guilty plea is subject to harmless-error review, the State's opposition reveals that the State actually agrees with Ruelas's alternative argument that, if harmless-error review applies, the Sixth Circuit's application of harmless-error review is erroneous. Pet. 23-25. According to the State, "[a] petitioner claiming that his plea is involuntary must show a reasonable probability that, *but for the error*,

he would not have pled guilty but would have insisted on going to trial." Opp. 17 (emphasis added).

That standard, however, is markedly different than the one articulated by the Sixth Circuit. The Sixth Circuit held that the relevant question for determining if Ruelas was harmed by his involuntary plea is "whether Ruelas was prejudiced such that he lost a legitimate chance to be sentenced to manslaughter rather than second-degree murder," *i.e.*, whether, but for the error, Ruelas would not have been found guilty. Pet. App. 19a. Thus, the State agrees with Ruelas that the Sixth Circuit used the wrong standard. The State's concession on this point alone calls for this Court's review.

The district court found that Ruelas had alleged that he would not have pleaded guilty to open murder if he had known manslaughter could not have been considered. Pet. App. 36a. To be sure, the State argues that this finding by the district court was incorrect, yet the State made the very same arguments to the Sixth Circuit, which declined to adopt them and instead decided the case on grounds the State recognizes it cannot defend. The State argues Ruelas needed to state more explicitly that he pleaded guilty based on the false information concerning the availability of manslaughter. Opp. 17. But no particular form of words is required, and Ruelas's motion to withdraw and plea colloquy clearly establish that he pleaded guilty because of the false assurance that manslaughter was available. The district court agreed—and the Sixth Circuit left untouched the finding that Ruelas would not have

pleaded guilty *but for* the trial court's error in promising to consider manslaughter. Even if harmless-error review applies, review by this Court is necessary to correct the Sixth Circuit's misapplication of harmless-error standards.

IV. This Case Presents an Ideal Vehicle for Addressing the Question Presented.

In the end, the State does not disagree that the question presented by Ruelas is an issue worthy of the Court's attention. Instead of a substantive opposition, the State relies on the familiar defense that the issue should not be addressed through certiorari in this case because it supposedly "presents a poor vehicle in which to examine the question raised." Opp. 9.

But the State's vehicle argument is also groundless. To the contrary, this case presents an ideal vehicle for addressing the question of whether an involuntary guilty plea is subject to harmless-error review.

First, although the State contends that this case is "dependent on a disputed factual record," Opp. 11, the fact the State calls disputed—the voluntariness of Ruelas's plea—was decided against the State by the district court and assumed against the State by the Sixth Circuit. Ruelas is not challenging the Sixth Circuit's determination of facts but rather its rule of law. The State further suggests that this case has "limited jurisprudential value," Opp. 18, because it relates to "an unusual legislative scheme," Opp. 9. The Sixth Circuit's holding, however, is independent

of the specifics of this case and applies across-the-board: *any* involuntary guilty plea will henceforth be subject to harmless-error review in that court. The question presented tests that narrow legal question in a manner that is not dependent on underlying facts. This Court can provide needed instruction for lower courts on how to handle an involuntary plea without requiring the Court to address or alter the legal standard for determining the voluntariness of guilty pleas and, consequently, without inviting new challenges to guilty pleas. *Cf. Padilla*, 2010 WL 1222274, at *8 (addressing standards for counsel's performance but leaving untouched the prejudice inquiry).

Second, the constitutional question is squarely presented, free of any issues of waiver or default. Ruelas properly raised his involuntary plea claim in state courts. *Cf. Bousley*, 523 U.S. at 621-22 (holding that the petitioner had procedurally defaulted his involuntary plea claim by failing to raise it on direct review). The State tries to manufacture a procedural issue by arguing that Ruelas failed to submit an affidavit when he sought to withdraw his plea. Opp. 18. But the State relies solely on *People v. Boone*, 244 N.W.2d 4 (Mich. Ct. App. 1976), which only requires an affidavit when additional facts are needed to show the plea was involuntary. Here, as in *Bousley*, Ruelas's plea could "be fully and completely addressed . . . based on the record created at the plea colloquy." 523 U.S. at 622.

Third, the question is timely. The Court's consideration is needed to resolve this undisputed

circuit conflict that has developed on whether an involuntary guilty plea can be harmless.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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